

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOANN MASON,

Plaintiff,

v.

**COMMISSIONER OF
SOCIAL SECURITY,**

Defendant,

Case No. 1:10 CV 2456

Judge Patricia A. Gaughan

REPORT AND RECOMMENDATION

Magistrate Judge James R. Knepp II

Introduction

Defendant Commissioner of Social Security filed a Motion to Dismiss (Doc. 12) Plaintiff Joann Mason's Complaint (Doc. 1) pursuant to Federal Civil Rule 12(b)(1). This matter has been referred to the undersigned for a Report and Recommendation pursuant to Local Rule 72.2(b)(1). For the reasons stated below, the undersigned recommends Defendant's Motion be granted.

Procedural Background

On June 25, 2006, Plaintiff filed a Complaint in the Northern District of Ohio seeking judicial review of Defendant's final decision denying her June 2003 application for supplemental security income (SSI) and disability insurance benefits (DIB). (Case No. 1:06 CV 1566, Doc. 1). On September 12, 2006, Defendant filed a motion to remand because the administrative law judge's (ALJ) decision and recording of Plaintiff's administrative hearing could not be located. (Case No. 1:06 CV 1566, Doc. 12). The court granted the motion, and remanded Case No. 1:06 CV 1566 pursuant to the sixth sentence of 42 U.S.C. § 405(g). (Case No. 1:06 CV 1566, Doc. 13). Following remand, the Court retained jurisdiction. *See Shalala v. Schaefer*, 509 U.S. 292, 297 (1993) (in

sentence six remand cases, a judgment is not entered until after the remand proceedings are completed and the Commissioner returns to court as required by sentence six of 42 U.S.C. § 405(g)).

On February 26, 2007, the Appeals Council vacated the final decision of the Commissioner and remanded the case to an ALJ for re-hearing. (Doc. 12, at 2). Following this hearing, the ALJ issued a decision, denying Plaintiff's application for SSI and DIB. (*Id.*). On September 10, 2010, the Appeals Council declined to assume jurisdiction of the case, making the ALJ's December 1, 2008 ruling the final decision of the Commissioner. *See* 20 C.F.R. §§ 404.984(a), 416.1484(a).

On October 28, 2010, Plaintiff filed a *pro se* Complaint initializing the instant case, seeking judicial review of a "Denial Decision of 9/10/10 and 2006." (Doc. 1). On February 15, 2011, Defendant's motion to reopen Case No. 1:06 CV 1566 was granted (Case No. 1:06 CV 1566, Doc. 14).

Discussion

Since remanding the case in 2006, the court in Case No. 1:06 CV 1566 has retained jurisdiction over this matter. *See Shalala*, 509 U.S. at 297. That case has also been reopened, and the parties are actively litigating the matter there. (*See e.g.*, Case No. 1:06 CV 1566, Doc. 20, Plaintiff's Brief on the Merits, filed 5/20/11). Therefore, Plaintiff's instant appeal of the administrative denial of benefits (Case No. 1:10 CV 2456) should be dismissed for lack of jurisdiction, and the matter may properly proceed in Case No. 1:06 CV 1566.

Conclusion and Recommendation

For the reasons described above, undersigned recommends the Defendant's Motion (Doc. 12) be granted and this case dismissed.

s/James R. Knepp II
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen days of service of this notice. Failure to file objections within the specified time WAIVES the right to appeal the Magistrate Judge's recommendation. *See U.S. v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).